

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NEW YORK
3 NO. CV-0401945 (JBW) (SMG)

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6 BARBARA SCHWAB, ET AL,
7 INDIVIDUALLY AND ON BEHALF
8 OF A CLASS OF ALL OTHERS
9 SIMILARLY SITUATED,

10 Plaintiffs

11 vs.

12 PHILIP MORRIS USA, INC.,
13 ET AL,

14 Defendants

15 *****

16

17

18 VOLUME: III

19 PAGES: 581-1001

20

21 CONTINUED VIDEOTAPED DEPOSITION of
22 JOHN R. HAUSER, SC.D.
23 FRIDAY, MAY 19, 2006

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25

1 Q. Now did you ask for this deposition? 2 A. I asked for materials. I, of course, 3 didn't know all the materials available. 4 Q. So you did not ask for this deposition? 5 A. I asked for materials that might be 6 relevant, and I was provided those 7 materials. I was not aware of all the 8 depositions that had been taken and all 9 the experts. 10 I don't know if that answers 11 your question. I will be glad to try 12 again. 13 Q. It doesn't answer my question. Did you 14 ask specifically for the deposition of 15 Dr. Gentry? 16 A. As I have indicated, I did not know all 17 the depositions. Therefore, I did not ask 18 specifically for the deposition of 19 Dr. Gentry. 20 Q. Did you know who Dr. Gentry was before you 21 received the deposition transcript? 22 A. I did not know who Dr. Gentry was prior to 23 receiving the deposition transcript. 24 Q. So it was plaintiffs' counsel's choice to 25 select that deposition to provide you?	Page 614 1 something along the lines of, "I am 2 informed," which were questions that I 3 asked, and as you have no doubt 4 established in the last deposition, I am 5 not a cigarette expert, and, as to all the 6 things that have happened with respect to 7 cigarettes, so I asked for materials that 8 would -- at the time of this that I had 9 been informed about earlier. 10 (Multipage Draft Expert Witness 11 Report by Dr. Hauser marked 12 exhibit number 30 for 13 identification.) 14 BY MR. GROSSMAN: 15 Q. Dr. Hauser, I am going to hand you what is 16 marked for identification purposes as 17 exhibit number 30. 18 MR. GROSSMAN: I will take off 19 the cover, because it is not part of the 20 document. This cover page is not part of 21 the document. 22 (Handing exhibit number 30 to 23 the witness.) 24 Q. This is a draft report, and I would like 25 to direct your attention, if I may, to
Page 615 1 A. This -- I had asked for materials. They 2 had provided materials. I presumed, since 3 they had choice of all possible things 4 from which to send me, this is one of the 5 things that I was sent. 6 Q. You say you asked for materials. You were 7 more explicit than that, weren't you? You 8 asked for certain kinds of materials? 9 A. I don't know quite how complete an answer 10 I can give. I would like to give you a 11 complete answer, if that's okay. 12 Q. Did you ask for specific kinds of 13 materials? Did you identify the kinds of 14 materials you wanted to receive? 15 A. Yes. I would like to -- I had asked for 16 materials that related to a paragraph in 17 one of the two incomplete drafts that I 18 had written. The paragraph may actually 19 be in both of the incomplete drafts. 20 Q. What is that paragraph? 21 A. I have -- I don't know the number -- I 22 don't recall the number. 23 Q. What is the substance of the paragraph? 24 A. Okay. Thank you. 25 In that paragraph, it begins	Page 617 1 paragraph 96. 2 A. Okay. There were two drafts and then one 3 minor modification of those drafts. It 4 would help me if you told me which 5 dates -- 6 Q. This is -- 7 A. -- because I notice you have it on your -- 8 Q. Yes. We were told at Mr. Gaskin's 9 deposition that the dates, although they 10 arise from the properties section of the 11 Word document that accompanied this, that 12 the dates might be off by a day. This one 13 was dated apparently December 19, 2005, 14 which was the same day when you filed a 15 final report -- 16 A. Okay. 17 Q. -- with the Court. It may be in fact that 18 it was drafted on December 18th, the 19 Sunday preceding that. 20 So I cannot attest to the day. 21 I can tell you that this is the last draft 22 that we have that precedes the final draft 23 that was filed with the Court and served 24 on the defendants on December 19th. 25 A. Okay. So this is the draft that has the

1 THE WITNESS: Grammatician? 2 MR. GROSSMAN: Grammarian. 3 A. -- grammarian, that the word should be 4 "ensure" as opposed to "assure." 5 Q. Okay. 6 A. And that was corrected, I believe, in the 7 later draft. 8 Q. Okay. Would you turn with me to paragraph 9 23, the next paragraph? (Witness complying.) 10 Q. You write, "The questionnaires were 11 pretested with 9 respondents on March 25 12 through March 29th, 2005, to ensure that 13 respondents understood the descriptions, 14 instructions, and questions and that their 15 answers adequately represented their 16 beliefs." 17 Do you see that? 18 A. Yes. I see that. 19 Q. And that's an accurate statement, is it 20 not? 21 A. The questionnaires plus the experience 22 with conjoint analysis. The pretest 23 combined with the experience of conjoint 24 analysis and my experience as an expert	1 MR. GROSSMAN: I will rephrase 2 the question. 3 BY MR. GROSSMAN: 4 Q. You have worked with Mr. Gaskin for years; 5 is that correct? 6 A. I have worked on and off with Mr. Gaskin 7 since I advised him in his thesis -- 8 Q. He -- 9 A. -- which I believe was 1983 or 1984. 10 Q. And he has conducted other interviews for 11 you; is that correct? 12 A. Mr. Gaskin has conducted other interviews 13 for me. 14 Q. And you have consistently relied upon the 15 interviews that he has conducted for 16 conjoint surveys and for other surveys as 17 well; is that correct? 18 A. I have consistently -- well, in trying to 19 recall whether or not Mr. Gaskin conducted 20 interviews prior to this for conjoint 21 surveys, I believe he has, but again I'm 22 trying to recall my -- specifically. 23 However, I will say that I have relied 24 upon Mr. Gaskin's ability to do 25 qualitative interviews in prior
1 allowed me to, well, actually people that 2 helped me in this, they were drafting at 3 my direction, but -- but I felt that my 4 experience plus these pretest interviews 5 would ensure that the descriptions, 6 instructions, and questions were correct 7 so that the answers adequately represented 8 the respondents' beliefs. 9 Q. With regard to the conjoint study, you did 10 not conduct any of the interviews; is that 11 correct? 12 A. These interviews were conducted at my 13 direction, and, therefore, I did not 14 conduct these interviews, nor did I 15 believe that they were necessary -- it was 16 necessary for me to do so. 17 Q. That is because Mr. Gaskin and 18 Ms. Schussheim are expert in conducting 19 such interviews; is that correct? 20 MR. HAUSFELD: I am going to 21 object to the use of the word "expert." 22 MR. GROSSMAN: I don't mean 23 expert in the same sense as in a 24 courtroom. 25 MR. HAUSFELD: That's the point.	1 Page 643 2 engagements, both in litigation and in 3 nonlitigation contexts. 4 Q. And you have also relied on Mr. Gaskin to 5 draft survey instruments, questionnaires, 6 not only in this matter but in other 7 matters; is that correct? 8 A. I don't believe -- I don't know how to 9 answer that, because the first part of 10 that question is not correct. 11 Q. Mr. Gaskin was principally responsible for 12 drafting the questionnaire in the conjoint 13 analysis that you did; isn't that right? 14 A. I don't believe that's a correct 15 characterization. 16 Q. Who drafted it? 17 A. Mr. Gaskin drafted it at my direction. I 18 was involved in this. We certainly talked 19 on the telephone. I'm the expert in the 20 case. And I feel that I had total control 21 over the final wording of this 22 questionnaire, subject, of course, to the 23 input from the customers and other inputs 24 that I would normally draw upon as an 25 expert. 26 Q. Who wrote the first draft of the

1 questionnaire? 2 A. That's a -- I'm not avoiding your 3 question. I want to say that's an 4 ambiguous question, because -- I can 5 explain. 6 Q. Who committed to paper or to the memory of 7 a computer the first draft of the 8 questionnaire used for the conjoint 9 analysis in this case? 10 A. As you have indicated, it was committed 11 to, I guess, the memory of the computer, 12 if that's what you call programming. The 13 person who would have done that would have 14 been the computer programmer. 15 Q. At whose -- did the computer programmer 16 have any discretion in deciding what words 17 would be in the first draft or first 18 iteration of the questionnaire used for 19 the conjoint analysis? 20 A. The computer programmer was working at my 21 direction through Mr. Gaskin. 22 Q. He was working at Mr. Gaskin's direction; 23 isn't that right? You never talked to the 24 computer programmer; isn't that right? 25 A. As I have just stated, the computer	Page 646 1 MR. HAUSFELD: Objection. 2 MR. GROSSMAN: How can you 3 object to a motion? 4 MASTER KRANTZ: I think from my 5 hearing it was a long answer, but I think 6 it was responsive, but why don't you just 7 continue probing the area. 8 MR. HAUSFELD: That's my 9 objection. 10 BY MR. GROSSMAN: 11 Q. Mr. Gaskin is a highly capable person in 12 survey research of computer -- of consumer 13 purchases, consumer desires, and you have 14 relied upon him to work with you on 15 surveys for many years; is that correct? 16 A. I have worked with Mr. Gaskin on surveys 17 in many contexts, in some of those 18 instances at my directions, in other 19 instances, particularly in nonlitigation, 20 as a collaborator. 21 Q. Did -- 22 A. But there was a prefix to your question 23 that I did not agree with. I did not 24 agree with the first part of your 25 question.
Page 647 1 programmer was working at my direction 2 through Mr. Gaskin. Mr. Gaskin did the 3 actual physical speaking to the computer 4 programmer. 5 Q. Mr. Gaskin also constructed the words that 6 were used in the first draft of the 7 questionnaire; isn't that right? 8 A. That is not a correct characterization. 9 Q. Did you -- who put together the words, you 10 or Mr. Gaskin? 11 A. Mr. Gaskin and I discussed the words. We 12 also listened to customers, customers who 13 certainly described -- want to have the 14 words described in the customer's words -- 15 well, want to have the words in the 16 questionnaire described in the customer's 17 words and phrases. 18 So Mr. Gaskin was following 19 methodology I set forth based upon the 20 qualitative interviews and then later the 21 pretests, and Mr. Gaskin certainly 22 discussed this with me. So he was working 23 at my direction. 24 MR. GROSSMAN: I move to strike 25 as nonresponsive.	Page 649 1 Q. That he is highly capable? 2 A. Mr. Gaskin has -- is capable in some 3 arenas. Mr. Gaskin is not trained in 4 other arenas. And I do not want to make a 5 blanket statement as to his expertise in 6 all arenas with respect to either conjoint 7 analysis or survey research. That will be 8 -- I can provide details if you would 9 like. 10 Q. Well, you rely upon his experience, 11 judgment, and knowledge to conduct 12 pretests and qualitative interviews for 13 your surveys; is that correct? 14 A. I believe that Mr. Gaskin was trained and 15 capable in terms of doing the qualitative 16 interviews. 17 Q. And the pretests? 18 A. I believe that Mr. Gaskin was trained and 19 capable of working at my direction to do 20 the pretest interviews. 21 Q. When you say working at your direction, 22 you weren't in the room when he was asking 23 the questions; is that correct? 24 A. As I have indicated before, I instructed 25 Mr. Gaskin to do these interviews and I

Page 650	Page 652
<p>1 was not in the room while he was carrying 2 out my directions. 3 Q. Mr. -- 4 MASTER KRANTZ: I am just going 5 to make a suggestion at this point to try 6 to expedite matters. If a question can be 7 answered yes or no, that's a fine answer. 8 You don't need to rephrase the question 9 and then affirmatively agree with it. You 10 can simply say yes. 11 BY MR. GROSSMAN: 12 Q. Mr. Gaskin also conducted the pretests for 13 the time surveys; right? 14 A. Mr. Gaskin was involved in the pretests 15 for the time studies. 16 Q. Did you conduct any pretest for the time 17 study? 18 A. I did not -- I don't know quite how to 19 answer that. 20 I was not in the room while 21 these pretests were conducted. 22 Q. Who drafted the questionnaire for the time 23 study? 24 A. I was involved in the draft of the 25 questionnaire for the time study with</p>	<p>1 pose the question again, and if you could 2 try to answer it as directly as possible. 3 THE WITNESS: Okay. 4 BY MR. GROSSMAN: 5 Q. Do you recall any editorial change or any 6 addition that you made to the 7 questionnaire that was used for the 8 conjoint analysis? 9 A. I cannot recall any specific word or 10 phrase in the process of developing that 11 questionnaire. 12 Q. Do you recall whether Mr. Gaskin wrote any 13 words or phrases in the conjoint analysis 14 questionnaire? 15 A. Mr. Gaskin was involved in writing the 16 survey. I not recall which specific words 17 or phrases he wrote. 18 Q. In fact, didn't Mr. Gaskin to your memory 19 write every word and phrase that was used 20 in the conjoint analysis questionnaire? 21 A. You misinterpret my statement. That is 22 not correct. 23 MASTER KRANTZ: You don't need 24 to comment on whether the questioner -- 25 THE WITNESS: Okay.</p>

1 draft time report light cigarettes 2 121905.doc, which also has some 3 handwriting at the top. 4 MR. HAUSFELD: Why don't you 5 identify the handwriting -- 6 THE WITNESS: Okay. 7 MR. HAUSFELD: -- so we can 8 distinguish it from other materials. 9 THE WITNESS: Basically same as 10 JH report CGTM short report, short RPT, 11 121605.doc, except draft. 12 BY MR. GROSSMAN: 13 Q. Okay. Now, Dr. Hauser, among those 14 documents that you say were not provided 15 to you by counsel are e-mails, various 16 other correspondence, and your own 17 analysis, such as the conjoint study graph 18 and your list of discovery materials as 19 requested from Dr. Hauser. 20 Is there any material that was 21 not provided to you by counsel that 22 consists of internal documents of the 23 cigarette companies or publicly-available 24 public literature on cigarette companies 25 or their products?	Page 666 1 cigarette company or literature on 2 cigarette distribution, sale, and use 3 obtainable through libraries or online 4 sites that you obtained, having not 5 received them from plaintiffs' counsel? 6 A. You are asking -- let me understand your 7 question. You are asking do I recall all 8 of the documents. I do not recall all of 9 the documents. 10 MR. GROSSMAN: I move to strike. 11 I move to strike as nonresponsive. 12 MASTER KRANTZ: That -- 13 BY MR. GROSSMAN: 14 Q. I am asking you if you recall any. 15 MASTER KRANTZ: I am going to 16 make a suggestion. Perhaps you could 17 break your question down a little bit. 18 MR. GROSSMAN: I am happy to. 19 BY MR. GROSSMAN: 20 Q. Do you recall any document that you ever 21 received from any source other than 22 plaintiffs' counsel that was an internal 23 document of a cigarette company? 24 A. I have got to answer yes to that. 25 Q. Could you identify such documents?
1 A. Are you referring to the pile that I 2 brought here today? 3 Q. I'm referring to anything that you ever 4 received. 5 A. Okay. As indicated on the first page of 6 that pile in discovery material, there is 7 material that I provided previously, and 8 to the extent that any of those can be 9 considered research on the cigarette 10 companies, those are research, and I have 11 provided them. 12 MR. GROSSMAN: I move to strike 13 as nonresponsive. 14 Q. Do you -- 15 MR. HAUSFELD: Objection. 16 Q. Do you recall -- 17 MR. HAUSFELD: Objection. 18 Objection to the drama in which the 19 question is asked. 20 MR. GROSSMAN: Okay. 21 MASTER KRANTZ: Let's just move 22 on. 23 BY MR. GROSSMAN: 24 Q. Do you recall any document that 25 constituted an internal document of a	Page 667 Page 669 1 A. Yes. You, I believe, to the best of my 2 recollection -- although I am not sure -- 3 that you showed me these in my last 4 deposition. 5 Q. I don't think I showed you any internal 6 document of a cigarette company at the 7 last session of your deposition. 8 A. Then I misrecall. You showed me a lot of 9 documents. I don't recall all of them. I 10 am being careful here. 11 Q. Apart from any document that you were ever 12 shown by counsel, do you ever recall 13 having received or reviewed any document 14 that was from the internal files of a 15 cigarette company? 16 A. Other than the document that we've had 17 before -- that we have seen here this 18 morning, I do not recall any documents 19 from the cigarette companies -- again I 20 don't recall -- that I have seen, unless 21 they have actually been produced. I just 22 don't recall everything that was in there 23 that we produced. 24 Q. I am just trying to get a clean answer 25 here. Have you ever looked anywhere, on

<p>1 the Internet or in a library or in any 2 other public source, for internal tobacco 3 company documents?</p> <p>4 A. I don't recall doing that.</p> <p>5 Q. Thank you.</p> <p>6 A. I may have done that.</p> <p>7 MASTER KRANTZ: Is your best 8 recollection you have no current 9 recollection of having done that? You may 10 have done it, but you don't recall it as 11 you sit here today; is that fair?</p> <p>12 THE WITNESS: I don't recall any 13 specific searches. I do recall some 14 general searches. You know, but I would 15 not say that I relied upon any of those 16 searches.</p> <p>17 MASTER KRANTZ: The question is 18 not reliance at the moment. The question 19 is whether you recall having done those 20 searches, if I understand the question 21 correctly.</p> <p>22 THE WITNESS: I am trying to 23 recall. I am doing my best.</p> <p>24 MASTER KRANTZ: I understand. 25 What is your best answer to the question?</p>	<p>Page 670</p> <p>1 A. I recall that -- well, yes, I think. 2 Certainly, as I recall various 3 textbooks that I have taught out of, there 4 is certainly some cigarette advertising in 5 them; various materials that, you know, I 6 would have looked at on the Web, many of 7 which I may have looked at that forms sort 8 of a general background information, 9 either before or during the time that I 10 have been involved in the case. However, 11 I did not rely on those.</p> <p>12 Q. And you don't recall any such specific 13 document; is that correct?</p> <p>14 A. I do not recall all the specifics of any 15 general searches. I have done my best to 16 provide anything I have relied upon.</p> <p>17 Q. I am not asking you about all the 18 specifics. I am asking do you recall any 19 specific of any such document.</p> <p>20 A. I do not recall specific words and phrases 21 or titles et cetera of these documents.</p> <p>22 Q. Do you recall any document by any 23 description you could give?</p> <p>24 A. I have -- I am finding a hard time to 25 describe some general searches. I can</p>
<p>1 Do you recall having done so?</p> <p>2 THE WITNESS: My best 3 recollection is I cannot recall the 4 specific sources.</p> <p>5 BY MR. GROSSMAN:</p> <p>6 Q. And you cannot recall any specific 7 document?</p> <p>8 A. I cannot recall any specific document.</p> <p>9 Q. And you cannot recall the subject of any 10 document?</p> <p>11 A. If I had done it, the subject would have 12 been cigarettes.</p> <p>13 Q. "If." But you cannot recall the subject 14 of any document that you reviewed on the 15 Internet or in the library; is that 16 correct?</p> <p>17 A. I am going to try to do my best here. I 18 cannot recall the specific subjects.</p> <p>19 Q. Do you recall having reviewed on the 20 Internet or in a library or from any other 21 source other than counsel in this case 22 documents dealing with the marketing of 23 cigarettes?</p> <p>24 A. Yes.</p> <p>25 Q. What documents?</p>	<p>Page 671</p> <p>1 recall a particular document written by 2 David Ogilvie. I can't recall the title. 3 But actually it is a reading in one of my 4 courses, and I believe that it has 5 cigarette advertising in it.</p> <p>6 THE VIDEOGRAPHER: We have to go 7 off the record to change tapes.</p> <p>8 MR. GROSSMAN: Okay.</p> <p>9 THE VIDEOGRAPHER: This is the 10 end of tape number 1. It is 10:35. We 11 are off the record.</p> <p>12 MR. GROSSMAN: Let's take our 13 first break. 14 (Recess taken at 10:35 a.m.) 15 (Recess ended at 10:49 a.m.) 16 (Mr. Parsigian no longer present 17 in the deposition room.)</p> <p>18 THE VIDEOGRAPHER: We are back 19 on the record. This is tape number 2. 20 The time is 10:49.</p> <p>21 BY MR. GROSSMAN:</p> <p>22 Q. Okay. Dr. Hauser, a survey can be 23 generalized only to the population 24 studied; correct?</p> <p>25 A. That is not always true.</p>

1 Q. Well, you attempt to conduct a survey 2 among the -- that is representative of the 3 group of people who are the subject of the 4 survey, of the study; is that correct? 5 A. Can you repeat that? 6 Q. Did you make any attempt in this case for 7 the people surveyed to be representative 8 of light smokers? 9 A. We made an attempt that the survey that we 10 did could be projected to a representative 11 set of light smokers. 12 Q. Why did you do that? 13 MR. HAUSFELD: Can we clarify 14 what surveys? Because -- 15 MR. GROSSMAN: I am referring to 16 the conjoint survey. 17 MR. HAUSFELD: Okay. If we 18 could call it the conjoint survey from now 19 on to distinguish it from other surveys. 20 MR. GROSSMAN: That is fine. 21 MR. HAUSFELD: I think it would 22 be helpful. 23 MR. GROSSMAN: That's fine. 24 THE WITNESS: So my answer is 25 for the conjoint study, we attempted to	Page 674 1 correct? 2 A. I conducted the survey -- I conducted the 3 conjoint survey of current light cigarette 4 smokers -- from a sample of current light 5 cigarette smokers. 6 Q. The conjoint survey sample did not include 7 any former smokers; is that correct? 8 A. To the extent that a current smoker is a 9 former smoker, it did include -- 10 Q. I will rephrase the question. 11 MR. HAUSFELD: No. Let the 12 witness finish, please, and I would 13 appreciate if you enjoined from drama 14 trying to indicate to the witness -- 15 MR. GROSSMAN: I am not being -- 16 MR. HAUSFELD: -- in the middle 17 of a question that you are dissatisfied 18 with the answer as he is giving it. 19 MR. GROSSMAN: I am not -- I am 20 not being dramatic. I am just trying to 21 get an answer to a question without -- 22 MASTER KRANTZ: We are going to 23 try to avoid colloquy that doesn't get any 24 of us any further. I suggest you just 25 repose the question.
Page 675 1 study a set of respondents that we could 2 project to the population of -- I am sorry 3 -- that we could project to the actions 4 and preferences, et cetera, of the 5 population of light surveys -- light 6 cigarettes -- smokers. 7 BY MR. GROSSMAN: 8 Q. Smokers? 9 A. Smokers, thank you. 10 Q. Why? Why did you look for a 11 representative population of light 12 smokers? 13 A. Well, a representative sample is a sample 14 that is probably best to project. It 15 requires the least adjustment in terms of 16 interpretation. 17 Q. Now in the time survey, you conducted the 18 survey of current and former smokers of 19 light cigarettes; is that correct? 20 A. In the time survey, I attempted to conduct 21 a survey of both light and former -- light 22 cigarette smokers and former light 23 cigarette smokers. 24 Q. In the conjoint study, you conducted the 25 survey only of current light smokers;	Page 677 1 MR. GROSSMAN: Yes. 2 MASTER KRANTZ: And let's move 3 on. 4 BY MR. GROSSMAN: 5 Q. Dr. Hauser, the conjoint survey was not 6 administered to anyone who had stopped 7 smoking; is that correct? 8 A. That's not technically correct. 9 Q. Okay. Who among the survey participants, 10 how many among the survey participants was 11 not a current smoker at the time of the 12 survey? 13 A. All respondents to the survey to the best 14 of our ability were current light 15 cigarette smokers. 16 Q. So there wasn't a single person in the 17 survey who had formerly smoked and was a 18 nonsmoker at the time of the survey; is 19 that correct? 20 A. The respondents -- at the time of the 21 survey, the respondents were smokers of 22 light cigarettes; therefore, there was no 23 one in the survey who was not a current 24 smoker of light cigarettes. 25 Q. For clarification, at the time of the

	Page 678		Page 680
1	survey, there was no one in the survey who	1	A. Marlboro, for example, would normally be
2	previously smoked and had stopped -- and	2	known as a brand. It has both regular and
3	had -- and was no longer smoking; correct?	3	light cigarettes.
4	A. Oh, okay. That is a slightly different	4	Q. And ultra lights.
5	question. That one I can answer.	5	A. All right.
6	Q. And what is the answer?	6	Q. And hundreds and special products like
7	A. The answer is there is no one in the	7	special blend 356?
8	survey who had stopped smoking and had	8	MR. HAUSFELD: He said "brand"
9	continued stopping smoking and was no	9	is ambiguous because the way the witness
10	longer smoking in the conjoint sample at	10	understands it and the way you're using it
11	the time of the conjoint study --	11	may not be the same. So if we define
12	Q. What --	12	"brand" --
13	A. -- to the best of our ability.	13	MR. GROSSMAN: I will restate
14	Q. Let's define people who used to smoke and	14	the question.
15	were no longer smoking as of the time of	15	BY MR. GROSSMAN:
16	the survey as "former smokers." Okay?	16	Q. Do you get the understanding that people
17	A. Okay. For the purposes of this	17	switch the kind of cigarette they smoke
18	deposition, someone who is no -- who used	18	over their smoking career sometimes?
19	to smoke and is not smoking at the time of	19	A. It is my understanding that some consumers
20	the survey, I will accept the definition	20	will switch either the brand or they might
21	that these are "former smokers."	21	switch the type of cigarette that they
22	Q. Okay. In addition to not making any test	22	smoke over their lifetime.
23	among former smokers, your conjoint survey	23	Q. And when you say "type," you are referring
24	did not include any current smokers who no	24	to light, ultra light, or what you call
25	longer smoked light cigarettes; is that	25	regular; is that correct?
	Page 679		Page 681
1	correct?	1	A. Well, you are defining "type," and I am
2	A. I'm not sure I understand your question.	2	using it within your context, not the
3	Current smokers of light cigarettes?	3	context in the survey.
4	Q. No.	4	Q. I did not use the word "type." It came
5	MR. GROSSMAN: I will rephrase	5	from you. I am asking you what you mean
6	the question.	6	by the word "type."
7	Q. Say a person smoked Marlboro Lights from	7	A. Within the context of the survey, it would
8	1980 to 1990, and in 1990 switched to	8	be regular versus light versus ultra
9	Marlboro Ultra Lights. That is a former	9	light. In other contexts, it might mean
10	smoker of light cigarettes who continued	10	other things.
11	to smoke.	11	Q. And you understand that in the population
12	A. Wait. They? What was that again? Okay.	12	of smokers there are people who at one
13	They smoked?	13	point in their smoking histories smoked
14	Q. Some people currently smoke --	14	light cigarettes and today smoke ultra
15	A. Some people currently smoke light	15	light cigarettes or what you call regular
16	cigarettes?	16	cigarettes or other types of cigarettes?
17	Q. -- brands -- no. Let me finish.	17	Do you understand that?
18	A. Okay.	18	A. I understand that there might be people --
19	Q. Some people currently smoke brands other	19	consumers who, if I understood -- if I
20	than light brands, but at sometime since	20	recall your question right who smoked
21	1971 had purchased light cigarettes. Do	21	light cigarettes in the past and who now
22	you understand the premise?	22	smoke other types of cigarettes, such as
23	A. I understand the premise, except for the	23	regular cigarettes.
24	ambiguous use of the term "brand."	24	Q. Your survey, your conjoint survey, made no
25	Q. What is ambiguous about the term "brand"?	25	attempt, and in fact excluded from

Page 682	Page 684
<p>1 participation, people who formerly smoked 2 light cigarettes but currently did not 3 smoke light cigarettes; correct?</p> <p>4 A. The conjoint analysis survey -- or the 5 survey upon which the conjoint analysis is 6 based was targeted towards consumers who 7 were current smokers of light cigarettes.</p> <p>8 MR. GROSSMAN: Move to strike as 9 nonresponsive.</p> <p>10 BY MR. GROSSMAN:</p> <p>11 Q. Could you answer the question, please?</p> <p>12 MR. HAUSFELD: He did.</p> <p>13 MASTER KRANTZ: I don't think 14 that -- that was sort of a negative, a 15 negative inference. It might have 16 answered the question. But why don't you 17 answer the question affirmatively if you 18 can.</p> <p>19 THE WITNESS: Okay. Can you ask 20 the question again?</p> <p>21 MR. GROSSMAN: Please ask the 22 question again.</p> <p>23 (The reporter then read back as 24 follows:</p> <p>25 "Question: Your survey, your</p>	<p>1 cigarettes but did not currently smoke 2 light cigarettes as of the time of the 3 survey?</p> <p>4 A. I don't recall all the details, but it 5 would have been, of course, my decision to 6 pick the target, but the instructions to 7 the best of my recollection was to ask 8 questions of light cigarette smokers.</p> <p>9 Q. Current light cigarette smokers?</p> <p>10 A. In the definitions that we're using today, 11 of current light cigarette smokers.</p> <p>12 Q. Dr. Hauser, in the time survey conducted 13 from late November to early December 14 2005 --</p> <p>15 A. Can I ask a question?</p> <p>16 Q. Yes.</p> <p>17 A. When you make a statement that is clearly 18 a question, is that still a question?</p> <p>19 MR. GROSSMAN: Move to strike.</p> <p>20 MASTER KRANTZ: I don't even 21 understand that question.</p> <p>22 THE WITNESS: He makes a --</p> <p>23 MASTER KRANTZ: He can make a 24 statement and ask you is that correct or 25 do you agree with it or is that fair.</p>

<p>1 look it up.</p> <p>2 Q. In the time survey, it was your decision 3 that both former and current light smokers 4 would be included in the survey; is that 5 correct?</p> <p>6 A. I, to the best of my recollection, I 7 believe it was my decision, yes.</p> <p>8 Q. Now people who have chosen to quit smoking 9 may well have valued the health aspects of 10 smoking, the taste aspects of smoking, and 11 other attributes of smoking differently 12 than people who choose to continue to 13 smoke; is that correct?</p> <p>14 A. I don't know the answer to that question.</p> <p>15 Q. Because you haven't tested it; is that 16 correct?</p> <p>17 A. I can speculate upon the answer. 18 MR. HAUSFELD: Don't speculate.</p> <p>19 Q. We don't want speculation.</p> <p>20 A. Okay.</p> <p>21 Q. You have not tested that question; is that 22 correct?</p> <p>23 A. I have not analyzed data which would -- 24 which enable me to at this time form an 25 expert opinion with respect to that.</p>	<p>Page 690</p> <p>1 A. Using the definition of "former" that 2 we've agreed to, the conjoint analysis 3 survey did not ask questions, and, 4 therefore, does not -- sorry -- the survey 5 upon which the conjoint analysis is based 6 did not ask questions of former light 7 cigarette smokers as defined in this 8 deposition and to the best of our ability.</p> <p>9 Q. If the class in this case is defined as 10 all people who ever purchased a light 11 cigarette from 1971 to the present, 12 including former smokers, your conjoint 13 analysis was intended to measure the 14 perceptions of a subset of that class that 15 currently consists of light smokers; 16 correct?</p> <p>17 A. I -- just to be technically accurate -- I 18 don't know specific -- I don't recall the 19 specific class period. Okay? 20 My survey -- the conjoint 21 analysis survey -- the survey upon which 22 the conjoint analysis is based was 23 targeted only towards or the sample was 24 based upon only those respondents who were 25 current light smokers. The conjoint</p>
<p>Page 691</p> <p>1 Q. People who currently smoke ultra light 2 cigarettes but used to smoke light 3 cigarettes may well value taste and health 4 aspects of smoking differently from people 5 who continue to smoke light cigarettes; is 6 that correct?</p> <p>7 A. I am not currently providing an expert 8 opinion with respect to that question, and 9 without further analysis, I don't know the 10 answer to that question.</p> <p>11 Q. Okay. Your conjoint analysis, to the 12 extent it is accurate or reliable, applies 13 only to current light smokers; is that 14 correct?</p> <p>15 A. That's not quite correct.</p> <p>16 Q. Your conjoint analysis studied only 17 current light smokers; correct?</p> <p>18 A. The sample of respondents upon which the 19 conjoint analysis is based were to the 20 best of our ability current light smokers.</p> <p>21 Q. Your conjoint analysis does not contain 22 any measured values that former light 23 smokers have for the taste of light 24 cigarettes or for the health aspects of 25 light cigarettes; is that correct?</p>	<p>Page 693</p> <p>1 analysis itself, not the survey, with 2 assumptions, might be used to inform 3 opinions about other respondents that are 4 similar in some way. However, I am not 5 providing any expert opinion with respect 6 to how that might be done at this point.</p> <p>7 Q. And you have made no attempt to measure 8 the choices made or that would be made in 9 weighing taste, health risks, and other 10 attributes among former smokers of light 11 cigarettes; is that correct?</p> <p>12 A. I have up to this point not done any 13 analyses yet that directly project the 14 conjoint analysis from current smokers to 15 former smokers, as we're defining "former 16 smokers" in this deposition.</p> <p>17 Q. Now the conjoint survey measured 18 consumers' potential choices among 19 hypothetical products with hypothetical 20 attributes; is that correct?</p> <p>21 A. That's not technically a full, correct 22 statement.</p> <p>23 Q. The conjoint analysis did not measure 24 consumer choices among products that are 25 currently marketed; is that correct?</p>

1 A. That's not quite correct. 2 Q. The conjoint analysis asked people to 3 compare such cigarettes as a cigarette 4 that tasted like a regular but had health 5 risks lower than an ultra light? That's 6 one possible type of cigarette that was on 7 the -- included in the conjoint analysis; 8 correct? 9 A. I -- we could look at the exact wording. 10 Q. And did -- 11 A. And by answering the question, I don't 12 want to state that that was the exact 13 wording. However, the survey upon which 14 the conjoint analysis was based asked 15 questions of that type. 16 Q. And such product such as a product that 17 tastes like a full-flavor cigarette or 18 regular cigarette but has risks lower than 19 ultra light are not to your knowledge 20 available on the market; is that correct? 21 A. As we have established, I have not done a 22 complete study of the cigarette market and 23 each and every product that is available, 24 and, therefore, I do not know whether or 25 not these products are currently	Page 694 1 A. Well, it is partially correct. 2 Q. What is incorrect about it? What part is 3 not correct? 4 A. You used the word -- you used "products" 5 in the plural. To the best of my 6 recollection -- we can look at the survey 7 -- we asked consumers their perceptions of 8 their current light cigarette. 9 Q. Okay. You asked consumers their 10 perception of their current light 11 cigarette with regard to taste and with 12 regard to health risk; correct? 13 A. We asked consumers -- to the best of my 14 recollection -- I can look at the survey 15 and answer it more accurately if you have 16 it in front of you. 17 MR. GROSSMAN: This was 18 previously marked. Do you know the 19 number? 20 (Discussion off the record.) 21 BY MR. GROSSMAN: 22 Q. Dr Hauser, this is a copy of -- we would 23 -- don't have the original exhibits with 24 us -- this is a copy of what was 25 previously marked as exhibit 7, which is
1 available. 2 Q. It was not your intention to ask consumers 3 to make trade-offs only among products 4 that are actually available; is that 5 correct? 6 A. That's a little bit not correct. 7 Q. In their personal lives making actual 8 purchases, consumers make trade-offs 9 between such factors as taste and 10 perceived risk in products that are 11 actually marketed; is that correct? 12 A. Consumers make trade-offs or -- I have 13 studied categories in which consumers make 14 trade-offs between perceived risks and 15 other positive attributes. 16 If you -- I am sorry. I just 17 forgot which attributes you gave. 18 Q. The conjoint survey, in addition to having 19 the conjoint part that asked consumers to 20 make trade-offs among perceived health 21 risks, taste, package type, and cost, 22 contained sections that asked consumers 23 about their actual perceptions of 24 actually-marketed products; is that 25 correct?	Page 695 Page 697 1 the so-called screen shots from your 2 conjoint analysis. Okay? 3 (Handing exhibit number 7 to the 4 witness.) 5 Q. And I am turning your attention, if I may, 6 to page E20. 7 MR. GROSSMAN: I don't have my 8 copy with me. Do you have another copy? 9 Thanks. I'm sorry. 10 THE WITNESS: Okay. 11 BY MR. GROSSMAN: 12 Q. Do you see that? 13 A. Again I would just like to get on the 14 record that the original was in color and 15 larger and easier to read, so any 16 squinting I do should not be inferred that 17 consumers would do that. 18 Q. Fine. The question reads: "Now let's 19 think about taste for a moment. Consider 20 the taste scale below where 100 21 represents" -- 22 A. Sorry. Sorry. Go ahead. 23 Q. -- "where 100 represents how much you like 24 the taste of your brand of light 25 cigarettes. The higher the number on the

1 correct? 2 A. I have done an analysis which has been 3 provided to you, in which I explored 4 median split analysis, which would be the 5 precursor of potential weighting. I can't 6 recall all the computations I did on that 7 spreadsheet. So I do not recall whether I 8 actually went the next step and did the 9 weighting. 10 (One-page Chart marked exhibit 11 number 38 for identification.) 12 BY MR. GROSSMAN: 13 Q. Let me hand you what has been marked for 14 identification purposes as Hauser exhibit 15 number 38. 16 (Handing exhibit number 38 to 17 the witness and counsel.) 18 MR. HAUSFELD: Thank you. 19 MR. GROSSMAN: You are welcome. 20 Q. This is a chart showing -- which I will 21 represent to you is taken from the -- is 22 taken from the CD-ROMs that you provided 23 us in discovery, showing the spread among 24 respondents in answering that question on 25 the conjoint survey. All right?	Page 702 1 accounting, and conditioned upon the scale 2 being correct, et cetera, given that 100 3 represents how much you like the taste of 4 your brand of light cigarette, what is the 5 value of the test scale, value on the test 6 scale from zero to 150, would you give to 7 regular cigarettes. 8 A total of -- what was your 9 question? I'm sorry? 10 Q. A total of less than 2 percent of the 11 respondents indicated a preference for the 12 taste of regular cigarettes over light 13 cigarettes; correct? 14 A. According to this document, basically you 15 are reading now the cumulative number 16 98.09, which is less than 2 percent away 17 from 100. So these 12 people are less 18 than 2 percent of the 627. 19 Q. And of the 627 respondents, 49 20 respondents, constituting less than 8 21 percent of the whole, had no preference 22 between the taste of light cigarettes and 23 regular cigarettes; correct? 24 A. To the extent that this is an accurate 25 representation, 49 respondents provided a
Page 703 1 A. I -- I accept that for now. We -- there 2 is a lot of details on here that I think 3 we, before you ask questions, we can go -- 4 you can describe to me. 5 Q. In responding to the question which asked 6 light smokers to compare the, on the taste 7 scale, the taste of their brand of light 8 cigarettes to the taste of regular 9 cigarettes, a total of 12 people out of 10 627 rated the taste of regular cigarettes 11 above 100; is that correct? 12 A. Yes. Well, let me -- 12. 13 Q. Two percent, less than two percent, of all 14 respondents in your survey, in your 15 conjoint survey, indicated that they 16 preferred the taste of regular cigarettes 17 to light cigarettes; is that correct? 18 A. Well, okay. You have represented that 19 this is -- 20 Q. I am representing -- 21 A. Okay. 22 Q. -- that this is an accurate accounting 23 of -- 24 A. Okay. So conditioned upon this accurate 25 accounting, this being an accurate	Page 705 1 rating of 100, which is a 7.81 percent of 2 the 627 respondents. 3 Q. Okay. And assuming the accuracy of this 4 representation of the CD-ROM that 5 contained the raw responses to your 6 conjoint survey, more than 90 percent of 7 all current light smokers had a preference 8 for the taste of light over the taste of 9 regular cigarettes; is that correct? 10 A. Say that again? 11 Q. Of the 627 people who responded to your 12 conjoint survey, more than 90 percent 13 indicated they preferred the taste of 14 light cigarettes to the taste of regular 15 cigarettes; correct? 16 A. According to this document, which we are 17 currently accepting as correct, 18 90.27 percent gave a rating of 99 or less. 19 Q. In fact, more than 50 percent of the 20 respondents gave a rating of 50 or less; 21 is that correct? 22 A. According to this document, which we're 23 accepting as correct, there are 159 24 respondents, which cumulatively is 25 57.10 percent, gave a rating of 50 or

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1 less.
2 Q. Okay. Now in the actual world where
3 actual products are sold, those smokers
4 who prefer the taste of light cigarettes
5 were making no trade-off between better
6 taste and lower risk in their purchase of
7 light cigarettes unless they believed that
8 light cigarettes posed more risk than
9 regular cigarettes; is that correct?
10 MR. HAUSFELD: Compound.
11 A. Could you please break that question into
12 parts?
13 Q. Yes. Okay.

14 MR. GROSSMAN: In fact, let's
15 take a two-minute break if we can.

16 THE VIDEOGRAPHER: The time is
17 11:31. We are off the record.

18 (Recess taken at 11:31 a.m.)

19 (Recess ended at 11:41 a.m.)

20 THE VIDEOGRAPHER: We are back
21 on the record. The time is 11:42.

22 BY MR. GROSSMAN:

23 Q. Dr. Hauser, we just took a break. During
24 that break, did you confer with counsel
25 for plaintiffs?

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1 A. Yes.
2 Q. Did you confer about your testimony in
3 this deposition?
4 A. Just in general.
5 Q. Did you confer about the question that I
6 had just asked?
7 A. Not really. No.
8 Q. What did you discuss?
9 A. Oh, pushing short-term memory here.
10 (Pause.)
11 A. I think they just told me to keep
12 answering -- answering the questions; you
13 know, be careful; listen to what you're
14 saying. That type of thing. I'm sorry.
15 I don't recall all the details.

16 MR. HAUSFELD: We asked him to
17 fix his collar on his suit.

18 THE WITNESS: See. I even
19 forgot that. And Miss, Ms., Mrs.? --

20 MS. ROSENBERG: Ms.

21 THE WITNESS: -- Rosenberg asked
22 me to fix my collar.

23 BY MR. GROSSMAN:

24 Q. Did you discuss any of the substantive
25 testimony you have given thus far?

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1 A. Not really. You know, I can't remember
2 what they -- all the details of what they
3 said.
4 Q. Did --
5 A. It wasn't anything substantive.
6 Q. In the last 15 minutes, including the time
7 of the break, did you discuss with
8 plaintiffs' counsel any answer that you
9 have given in response to any question
10 today?
11 A. Any specific answer? No.
12 Q. Any general answer?
13 A. Yes. I asked why you changed from one
14 study to another.
15 Q. Did plaintiffs' counsel indicate to you
16 why they believed I changed from one study
17 to another?
18 MR. HAUSFELD: I don't
19 speculate.
20 MASTER KRANTZ: Let's let the
21 witness answer.
22 MR. GROSSMAN: Let the witness
23 answer the question. I move to strike.
24 That is totally inappropriate.
25 MASTER KRANTZ: Stricken. Let

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1 the witness answer the question, not the
2 attorney.
3 THE WITNESS: They said you jump
4 all over the place.
5 BY MR. GROSSMAN:
6 Q. Did you discuss any other question that
7 might be presented today?
8 A. Not that I recall. I mean I have got to
9 admit we were talking more about health
10 issues and yoga.
11 Q. Dr. Hauser, looking again at exhibit 38 --
12 A. Which one?
13 Q. The one in front of you.
14 A. This one. Okay. Thank you.
15 Q. When you completed -- when the survey --
16 the conjoint survey -- I will start this
17 question again.
18 When the conjoint survey was
19 completed, did you run a calculation of
20 the answers that respondents gave to the
21 question of how they would rate regular
22 cigarettes and taste compared to their
23 brand of light cigarettes?
24 A. How they would rate? State that again?
25 Q. Did you run any analysis of the answers

1 for a hypothetical person. And the person 2 has a positive preference for taste. 3 Q. Yes. 4 A. Okay. 5 Q. Do you know anybody who doesn't have a 6 positive preference for taste? Have you 7 ever met -- 8 MR. HAUSFELD: On anything? 9 Q. Have you, in your life, have you ever met 10 anyone who says, you know, I think I 11 prefer things that really taste lousy as 12 opposed to things that I think really 13 taste good? 14 A. Taste is a very complex entity. I have 15 noticed you have drunk a lot of Diet Coke. 16 I don't know your preference between 17 regular Coke and Diet Coke. I could ask 18 that. You are making trade-offs. 19 Yesterday, and I can give lots 20 of examples, where I was asked to try 21 something that, you know, tastes 22 astringent, but yet -- 23 MR. GROSSMAN: Move to strike as 24 nonresponsive. 25 BY MR. GROSSMAN:	1 can say so. 2 BY MR. GROSSMAN: 3 Q. You have asked -- you asked the 4 respondents on a scale of zero to 150 plus 5 what value they would give to the taste of 6 regular cigarettes if the taste of light 7 cigarettes were valued at 100. 8 Is it not your common 9 understanding that, all things being 10 equal, people prefer taste, things that 11 they say taste better, to things that they 12 say taste worse? 13 A. In most situations, people will prefer, 14 all else being equal, things that they 15 taste -- that taste better to things that 16 taste worse. 17 Q. Okay. And now you say, "All other things 18 being equal"? 19 A. In most situations. 20 Q. In most situations, if cigarette consumers 21 believe that the health risks of light 22 cigarettes are the same or lower than the 23 health risks of regular cigarettes, they 24 will opt for the cigarette -- for the 25 light cigarette if they think it tastes
1 Q. Do you know -- 2 MASTER KRANTZ: Could I suggest 3 you pose a different question than whether 4 in his ordinary life he knows people who 5 don't care about taste? 6 MR. GROSSMAN: Well, the problem 7 is that these -- the -- I will address it 8 to the witness. 9 BY MR. GROSSMAN: 10 Q. You have asked people to place -- to 11 indicate what they taste -- what they 12 thought tasted better: a regular 13 cigarette or a light cigarette. And they 14 have answered on a scale of zero to 150 15 plus. 16 Is it your -- 17 MR. HAUSFELD: I don't believe 18 that was the -- he -- that's what the 19 question is in terms of the use of the 20 word "better," but. 21 MR. GROSSMAN: Move to strike as 22 -- move to strike the colloquy. 23 MASTER KRANTZ: Allow the 24 witness to answer the question. If he 25 disagrees with the characterization, he	Page 723 1 better; right? 2 A. I don't agree with that statement. There 3 is a lot of other issues going on here. I 4 -- I am -- I am sorry I am being technical 5 here, but, you know, you are going into 6 technical areas, and I can do my best to 7 explain this. 8 Q. What is the countervailing consideration 9 against a cigarette tasting better if the 10 same consumer perceives that the cigarette 11 is either less dangerous or equally 12 dangerous than the cigarette that tastes 13 worse? 14 A. Okay. I'll grant that most people will 15 have a positive preference for taste. I 16 will also grant that most people have a 17 positive preference for health risk. You 18 may recall that in the survey, not 19 everybody did. And I have to be careful 20 about that. 21 I will also grant that in most 22 cases there are no interactions. We 23 tested for them, and there did not appear 24 interactions. 25 You have now also stated that

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1 there is a cerebus paribus or all else
2 equal statement here. So to the extent
3 that you allow me to make those
4 assumptions, okay, and to the extent that
5 we don't have sort of a learning of taste
6 over time, which is something that I
7 didn't measure, then given the
8 hypothetical, consumers would prefer one
9 of these to the others, and that's given
10 -- that is fully conditioned on all those
11 hypotheticals and fully conditioned on all
12 of the assumptions you have now allowed me
13 to make.
14 Q. And the one that we would prefer would be
15 the light; correct?
16 A. Well, conditioned upon this hypothetical,
17 as you have stated, the one they would
18 prefer would be the light cigarette.
19 Q. And that's because assuming that there are
20 no countervailing considerations and all
21 other things being equal and there are no
22 unmeasured interactions, if the cigarette
23 tastes better in the consumer's perception
24 and it is no more dangerous in the
25 consumer's perception, all of the factors

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1 hypothetical, people would prefer the
2 cigarette that you have labeled as light.
3 Q. Okay. And, Dr. Hauser, have you studied
4 the actual sales of light cigarettes in
5 the United States?
6 A. To the extent that the survey that was
7 done upon which the conjoint analysis is
8 based, there are some data on current
9 brands of cigarettes. Other than that and
10 other than the materials that you have
11 provided to me previously, I have not done
12 any further study of the sales of light
13 cigarettes.
14 Q. Okay. And just to clarify this, you were
15 provided with a copy of Monograph 13 by
16 the plaintiffs you have testified earlier?
17 A. Right. There is Monograph 13; there is
18 some of the materials in this packet that
19 I brought with me this morning. There
20 might be -- I just can't remember all the
21 materials that have been previously given.
22 Some of these may contain materials about
23 sales, and, of course, there are data
24 that, you know, it is not meant to be a
25 study of sales.

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1 point to smoking the cigarette that tastes
2 better, the light cigarette; correct?
3 A. Well, your hypothetical has a choice now
4 among two particular cigarettes. I don't
5 want to project that if there are other
6 cigarettes they are choosing among. Okay?
7 So given those two particular cigarettes,
8 given the hypotheticals that you have
9 stated, then consumers would prefer this
10 one cigarette that is light on taste and
11 light on health risk, given --
12 Q. Or the same --
13 A. -- the preference orders and given the
14 assumptions we have made.
15 Q. Or the same on health risks?
16 A. Okay. Given the assumption of light
17 preferred to regular on taste, given the
18 assumption of lights weakly -- regular
19 weakly preferred to lights, meaning it is
20 greater than or equal to, on health risk,
21 given that there are no interactions,
22 given positive preference for taste, given
23 positive preference for lower health risk,
24 and given a choice among those two and
25 only those two products, then that

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1 MR. GROSSMAN: Move to strike as
2 nonresponsive.
3 MASTER KRANTZ: I think you have
4 answered the question.
5 THE WITNESS: Okay.
6 BY MR. GROSSMAN:
7 Q. Monograph 13 was published in 2001;
8 correct?
9 A. To the best of my recollection. If you
10 will let me take a look at it, I will look
11 at the dates.
12 Q. Let's -- accept my representation that it
13 was published in 2001.
14 Have you studied the effect on
15 sales of light cigarettes by the
16 publication of Monograph 13?
17 A. I am sorry. Can you say that again?
18 Q. Since the publication of Monograph 13, has
19 the sales of light cigarettes gone up or
20 down? Do you know?
21 A. Sitting here today, I do not know whether
22 or not the total sales of light cigarettes
23 have gone up or whether or not they have
24 gone down or whether or not they have
25 stayed the same.

1 Q. Sitting here today, do you know whether 2 the percentage of cigarette sales in 3 America that were sales of cigarettes 4 labeled as light went up, down, or stayed 5 the same following the publication of 6 Monograph 13? 7 A. Okay. Just so we're not ambiguous here, I 8 do not know the percentage of sales of 9 light cigarettes as compared to other 10 cigarettes on the marketplace, sitting 11 here today, and I do not know that 12 percentage with respect to either volume 13 or dollar share. 14 Q. Okay. Dr. Hauser, let me direct your 15 attention, if I may, to the opinion of 16 Judge Weinstein on the motion for summary 17 judgment on statute of limitations, 18 previously marked as exhibit number 33. 19 MR. GROSSMAN: Let me get mine 20 out here. 21 (Pause.) 22 MR. HAUSFELD: I have a copy if 23 you would like me to -- 24 MR. GROSSMAN: I have my copy. 25 Q. Doctor, if you would look on the last page	Page 730 1 A. Not the entire thing. 2 Q. Do you recall -- and you received a copy 3 of it from plaintiffs' counsel; correct? 4 A. I -- I received a copy of it. I, as I 5 recall, I'm not totally sure how it got to 6 me. 7 Q. You have no reason to believe that it came 8 from any source other than plaintiffs' 9 counsel, do you? 10 A. I do not recall where it came from. So I, 11 therefore, have no -- no reason to believe 12 that it is not the plaintiffs' counsel. 13 Q. Okay. Now do you recall when you received 14 your copy? 15 A. No. I'm sorry. I do not. 16 Q. When was the first -- this statute of 17 limitations decision at page 10 contains 18 the following language -- 19 A. Where? Where are you reading? 20 Q. "Continuing problems"?21 A. Okay. 22 Q. "A troubling critical problem for 23 plaintiffs is that some members of the 24 class almost certainly were aware long 25 before 2000 that 'light' cigarettes were
1 of this, it is dated October 6, 2005. Do 2 you have your -- there is a marked copy in 3 there. 4 (Handing exhibit number 33 to 5 the witness.) 6 Q. Here is exhibit number 33. 7 MR. HAUSFELD: Thank you. 8 A. Thank you. I am sorry. Which page? 9 Q. Do you see on the last page this was dated 10 October 6, 2005? 11 MASTER KRANTZ: I think it is 12 the second to last page of that document. 13 MR. GROSSMAN: Oh, the last page 14 is the cover sheet on your copy. I see. 15 BY MR. GROSSMAN: 16 Q. The second to last page, do you see that 17 it was marked -- dated October 6, 2005? 18 A. Yes, I do. 19 Q. Now, Dr. Hauser, you testified at the 20 first session of your deposition that this 21 statute of limitations opinion of 22 Judge Weinstein was one of your reliance 23 materials? 24 A. Well, I read part of it. 25 Q. Did you --	Page 731 Page 733 1 not appreciably safer for them than 2 regular cigarettes. The statute would bar 3 their claims." 4 Do you see that? 5 A. Yes. I see those words. 6 Q. Do you recall having read that in the 7 past? 8 A. Yes. I probably did read that. 9 Q. Okay. Continuing -- 10 A. I don't recall too much of it. 11 Q. "Yet the plaintiffs may be able to show 12 that a substantial number of smokers were 13 not aware before May 2000. The individual 14 class members and their times of awareness 15 may well have differed over the years. 16 Suppose, for example, that one million 17 became aware in 1998, one million in 1999, 18 one million in 2000, and one million in 19 2001. The first two million 1998 to 1999 20 would be barred. The third (2000) could 21 be deemed damaged for a year or less, and 22 the fourth (2001) for somewhat more of a 23 year. According to plaintiffs' theory of 24 the case, the particular persons in each 25 group cannot be known.

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1 this. So those two sets of analyses
2 together, we were -- I was able -- that
3 was the role of the pretests, but I would
4 like to include the qualitative --

5 Q. Okay.

6 A. -- in there as well.

7 Q. Leaving the -- adding in the qualitative
8 interviews as well, the qualitative
9 interviews and the pretests of the time
10 study ensured that the respondents
11 understood the descriptions, instructions,
12 and questions and that their answers
13 adequately represented their beliefs;
14 correct?

15 A. The word, the key word here, is "belief,"
16 but yes, this is, the questions are
17 understood, and respondents state to their
18 best of ability --

19 Q. Okay.

20 A. -- their beliefs.

21 Q. And you would not have approved the
22 conduct of the survey, the actual survey,
23 in late November and early December 2006
24 unless you believed that the pretest had
25 ensured that the respondents could answer

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1 the questions by understanding the
2 questions and give -- and able to -- and
3 were able to reflect their true beliefs
4 with regard to the questions; is that
5 correct?

6 A. Well, it mischaracterizes the process a
7 little bit.

8 Q. Doctor, you approved going forward with
9 the survey in late November and early
10 December 2005; is that correct?

11 A. At the time I approved going forward with
12 the survey, I believed that respondents
13 could understand the questions. I thought
14 there was a very good chance -- or I
15 wouldn't have gone ahead with it -- that
16 the answers would make sense. I wasn't
17 totally sure of that at the time. I had
18 my doubts. But I thought that we would
19 have a good chance of getting answers that
20 would be internally consistent.

21 MASTER KRANTZ: Just to move
22 things along, the question was whether you
23 approved it.

24 THE WITNESS: Okay.

25 MASTER KRANTZ: And I think if

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1 you would focus on the question in
2 answering just the question, we would make
3 more progress.

4 BY MR. GROSSMAN:

5 Q. You did approve it, didn't you?

6 A. Within the context as I have described, I
7 approved it.

8 Q. It wouldn't have gone ahead if you didn't
9 approve it, would it?

10 A. The survey would not have gone ahead if I
11 did not approve the next stage.

12 Q. Okay.

13 MR. GROSSMAN: Excuse me one
14 moment. We're getting all sorts of sounds
15 over the telephone. Could you turn on the
16 mute, please?

17 MR. KOETHE: Julie?

18 MS. FISCHER: Ted?

19 MR. GROSSMAN: Yes.

20 MS. FISCHER: The mute is on.

21 MR. GROSSMAN: We are getting
22 all sorts of typing sounds.

23 MS. FISCHER: That is odd,
24 because the mute is on.

25 MR. GROSSMAN: Well, you are

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1 creating electrical signals that are being
2 picked up by the --

3 MS. FISCHER: All right.

4 THE WITNESS: Can I make a
5 request?

6 MR. GROSSMAN: Now --

7 THE WITNESS: That at some point
8 we can just lower the heat a little bit.
9 You guys have got your jackets off.

10 MR. GROSSMAN: When we take a
11 break, we will do what we can.

12 THE WITNESS: Okay.

13 BY MR. GROSSMAN:

14 Q. Dr. Hauser, could you return with me to
15 exhibit number 39?

16 A. Which one is 39?

17 Q. 39 is the series of e-mails. You had it a
18 moment ago.

19 (Witness complying.)

20 A. This is it?

21 Q. Yes. Could you look with me at the page
22 that is marked at the bottom 008?

23 (Witness complying.)

24 Q. This is an e-mail from Paul Gallagher to
25 Steve Gaskin, correct, on its face?

	Page 778		Page 780
1 A. This appears to be an e-mail from Paul 2 Gallagher to Steve Gaskin, November 11th. 3 Q. 2005? 4 A. 2005. 5 Q. Have you ever seen -- 6 A. Can I read it? 7 Q. Excuse me. Sure. 8 (Pause.) 9 (The witness viewing exhibit 10 number 39.) 11 A. Yes. I see this. 12 Q. Have you seen it before? 13 A. No, I have not seen this before. 14 Q. All right. This indicates that 15 Mr. Gallagher used a link that was sent to 16 him, and it worked. I am reading, "A 17 couple of minor items that I assume are 18 the result that this is just a pretest: 19 it was very slow between screens 20 (sometimes I even thought my computer had 21 locked up) and there are spelling and 22 typing errors in the questions." 23 Do you see that? 24 A. Yes. This sounds like a survey in 25 process.		1 you have seen the e-mail. Leaving aside 2 whether you saw the e-mail, was it your 3 understanding as the questionnaire was 4 evolving through pretest that plaintiffs' 5 counsel were commenting on the drafts of 6 the questionnaire? 7 A. You know, I don't know. Certainly if they 8 would have given comments as to whether or 9 not they felt the questions were accurate, 10 I would have responded. My goal is to 11 write accurate questions. But I don't 12 recall all the details of -- I mean I do 13 know that I was writing questions and with 14 Mr. Gaskin attempting to phrase these as 15 accurately as possible. That much I do 16 remember. So I do not know to what extent 17 counsel provided suggestions as to the 18 wording of the questions. 19 Q. You don't know one way or the other? 20 A. I don't recall. No. I just don't recall. 21 Q. Could you turn with me to number 007 in 22 exhibit number 39? 23 (Witness complying.) 24 Q. And that's an e-mail from Paul Gallagher 25 to Steve Gaskin, which reads: "Hi Steve.	
1 Q. Yes. A pretest of the time survey; 2 correct? 3 A. Yes. 4 Q. The next paragraph: "The bigger issue 5 seems to be that the survey doesn't get to 6 the questions we want to answer, i.e., 7 when you began smoking did you believe the 8 cigarettes were less harmful; did that 9 change at any time; if you no longer 10 believe they are less harmful, do you know 11 when you first began to suspect this; and 12 when did you first hear/suspect/believe 13 that the cigarette companies may have 14 committed a fraud regarding light 15 cigarettes." 16 Do you see that? 17 A. I see that sentence. 18 Q. Okay. Was it your understanding as the 19 questionnaire for the time survey was in 20 pretest that plaintiffs' counsel was 21 commenting upon the questionnaire as it 22 was evolving? 23 A. This is the first time I have seen this 24 e-mail. 25 Q. Would -- I understand it is the first time	Page 779		Page 781
		1 Could you and me and John have a call to 2 finalize the approach to the survey, 3 preferably tomorrow, but if not, maybe on 4 Thursday or Friday." 5 Do you see that? 6 A. I see that. 7 Q. Have you seen this e-mail before? 8 A. I don't appear to be copied on it, so I 9 don't recall. 10 Q. Now could you turn with me to what has 11 been marked as 006? 12 (Witness complying.) 13 Q. Or even better yet, let's go to 005, 14 page 005, which is a series of e-mails on 15 Tuesday, November 15th, and Wednesday, 16 November 16th, 2005. 17 (Witness complying.) 18 Q. Do you see the first is an e-mail from 19 Paul Gallagher to you and Steve Gaskin? 20 The first staying at the top of the page. 21 It is not the first chronologically. 22 A. Oh, okay. I am sorry. I was looking at 23 the bottom of the page. 24 Yes. There is an e-mail at the 25 top of the page from Paul Gallagher to me	

<p>1 and to Steve Gaskin.</p> <p>2 Q. Okay. You are right. It is better to</p> <p>3 start at the bottom so we are</p> <p>4 chronological.</p> <p>5 The earliest of the e-mails on</p> <p>6 this page is from November 15, 2005, at</p> <p>7 7:04 p.m.; right?</p> <p>8 A. It seems to be about right. Yes.</p> <p>9 Q. And that is an e-mail in which Steve</p> <p>10 Gaskin writes to Paul Gallagher, "I am not</p> <p>11 available until Thursday and Friday, but</p> <p>12 free anytime then." And then says,</p> <p>13 "John."</p> <p>14 And then below that, it says, "I</p> <p>15 am heavily booked tomorrow and have to go</p> <p>16 to an MIT Sloan Retreat on Friday.</p> <p>17 (However, there is a chance it will end</p> <p>18 early.)</p> <p>19 "On Thursday I have some time</p> <p>20 open between 2 and 4 p.m. Later in that</p> <p>21 time frame, e.g., 3 p.m. would be better."</p> <p>22 Do you see that?</p> <p>23 A. I see that.</p> <p>24 Q. That is your response; is that correct?</p> <p>25 A. That's my response. I am heavily booked,</p>	<p>Page 782</p> <p>1 survey?</p> <p>2 A. I recall having a conference call -- I --</p> <p>3 I -- I am sorry -- I recall having</p> <p>4 conference calls during this period. I do</p> <p>5 not recall the specific dates I had these</p> <p>6 conference calls. I do know that we</p> <p>7 discussed the surveys during this period.</p> <p>8 Q. Is it your general practice to allow</p> <p>9 attorneys to have an input into the</p> <p>10 wording or formulation of surveys that you</p> <p>11 perform as an expert witness?</p> <p>12 A. Well, that's a mischaracterization. I --</p> <p>13 Q. I am asking you whether it is your normal</p> <p>14 practice.</p> <p>15 A. As a survey expert, I am -- you are asking</p> <p>16 for my normal practice?</p> <p>17 Q. Yes.</p> <p>18 A. So as a survey expert, counsel will ask me</p> <p>19 certain questions. I will then do my best</p> <p>20 to take those questions, which are usually</p> <p>21 legal questions, did X do Y, you know,</p> <p>22 when did consumers do what -- do this,</p> <p>23 et cetera, and turn that into a scientific</p> <p>24 study.</p> <p>25 I -- as I would do as an expert</p>
<p>1 and there appears to be about an hour --</p> <p>2 Q. Okay.</p> <p>3 A. -- that I can devote to this.</p> <p>4 Q. So do you recall having met on the</p> <p>5 telephone or otherwise with Paul Gallagher</p> <p>6 and Steve Gaskin in mid November to</p> <p>7 discuss the wording and general approach</p> <p>8 to the survey that was being pretested?</p> <p>9 A. As I've said, I have recalled conference</p> <p>10 calls. I don't recall all the content of</p> <p>11 this. It appears from this e-mail that --</p> <p>12 where was the statement?</p> <p>13 Q. The original string is from November 15th,</p> <p>14 and it's on page 008.</p> <p>15 A. Well, 008 is not an e-mail that I have</p> <p>16 seen before, so.</p> <p>17 Q. And on 007, there is a request, could</p> <p>18 Steve and Paul and you have a call to</p> <p>19 finalize the approach to the survey?</p> <p>20 A. I also haven't seen this e-mail prior to</p> <p>21 this time.</p> <p>22 Q. Whether you saw it or not, do you recall</p> <p>23 having a discussion, November 17, 18, 19</p> <p>24 time frame, with Paul Gallagher and Steve</p> <p>25 Gaskin to finalize the approach to the</p>	<p>Page 783</p> <p>1 or even in nonlitigation context, I would</p> <p>2 then make sure that I'm checking with the</p> <p>3 clients to find out whether the questions</p> <p>4 I'm asking consumers will answer the</p> <p>5 questions that are appropriate to them as</p> <p>6 clients, in other words, the questions</p> <p>7 that are legally appropriate to answer.</p> <p>8 They're not going -- I'm not going to let</p> <p>9 them dictate exactly how I ask these</p> <p>10 questions nor get into the science of the</p> <p>11 study.</p> <p>12 However, as consumers -- as</p> <p>13 people, if they say, "Gee, this question</p> <p>14 is ambiguous," or "I have a hard time</p> <p>15 reading it," or "I don't understand it," I</p> <p>16 will certainly take that as input, because</p> <p>17 as a survey expert, I want to listen to as</p> <p>18 much input as I possibly can from</p> <p>19 consumers and other people.</p> <p>20 So my normal practice is to</p> <p>21 listen to everybody I can, integrate that</p> <p>22 input, and try and write a survey that</p> <p>23 will answer the question as posed to me by</p> <p>24 the client.</p> <p>25 Q. Now in your expert report, you</p>

1 better methodology than the time study, as 2 I have indicated in this issue of 3 incentives, but I do not recall all the 4 details of the racial breakdown, nor do I 5 think they're relevant. 6 Q. You don't think they are relevant because 7 you have never read any literature on the 8 effect of race on smoking patterns in the 9 United States; isn't that correct? 10 A. Are you asking me why I think -- 11 Q. No. I am saying you have never read any 12 literature -- 13 MR. HAUSFELD: No. That is not 14 the question. 15 MR. GROSSMAN: I am asking a new 16 question. 17 MR. HAUSFELD: Well, then -- 18 MASTER KRANTZ: The last 19 question -- 20 MR. GROSSMAN: Keep quiet. 21 MASTER KRANTZ: Excuse me. No 22 colloquy. The last question is withdrawn? 23 MR. GROSSMAN: Yes. 24 MASTER KRANTZ: Pose a new 25 question.	Page 802 1 chosen by white Americans, you don't know 2 about those differences; correct? And you 3 didn't study them; correct? 4 A. Okay. If I understand the question, you 5 are asking me did I study the differences, 6 other than what I have seen already 7 presented to me in this case or presented 8 to Mr. Gaskin, did I study the differences 9 in respondents' or consumers' choice of 10 brand based upon race? I -- is that the 11 right question? 12 Q. Yes. 13 A. Okay. I have not studied the choice of 14 brand and how the brand choice is affected 15 by race. 16 Q. And you have, similarly, you have not 17 studied the choice between light and what 18 you call regular cigarettes in the white 19 community versus the African-American 20 community; is that correct? 21 A. Well, I'm not -- why did you use "you 22 call"? 23 Q. "You call"? 24 A. You said, "What I call." You used the 25 words, "You call."
1 MR. HAUSFELD: That is all I was 2 going to ask, your Honor. 3 MR. GROSSMAN: The record is 4 clear. 5 MR. HAUSFELD: There is no 6 reason for unprofessional conduct in 7 telling anyone, counsel or otherwise, to 8 keep quiet. 9 MR. GROSSMAN: That wasn't 10 unprofessional. It was appropriate. Now 11 I will continue. 12 MASTER KRANTZ: Again we started 13 the deposition with a suggestion of 14 limited colloquy, and I stick with that 15 suggestion. 16 MR. GROSSMAN: All right. 17 BY MR. GROSSMAN: 18 Q. Dr. Hauser, have you ever read any 19 publication, by the surgeon general or 20 otherwise, on the effect of race on 21 smoking patterns in the United States? 22 A. Not that I can recall. 23 Q. Okay. So if there are enormous 24 differences between the cigarettes chosen 25 by black Americans and the cigarettes	Page 803 Page 805 1 Q. What you referred to in your survey as 2 regular cigarettes. 3 A. Okay. In my survey refers appropriately 4 within context to regular cigarettes. 5 MR. GROSSMAN: Move to strike as 6 nonresponsive. 7 MASTER KRANTZ: That is not 8 worth getting into a debate about the term 9 that you are debating. 10 THE WITNESS: Right. 11 MASTER KRANTZ: I think the 12 question is clear. Do you want to reread 13 the question? Do you want to repose the 14 question? 15 MR. GROSSMAN: Why don't you 16 reread the question. 17 (The reporter then read back as 18 follows: 19 "Question: And you have, 20 similarly, you have not studied the choice 21 between light and what you call regular 22 cigarettes in the white community versus 23 the African-American community; is that 24 correct?" 25 THE WITNESS: Could you reask

	Page 822		Page 824
1	Q. 30.	1	your own by reading the New York Times
2	A. Okay.	2	historically or other newspapers
3	Q. And in particular, I would like to direct	3	historically or going online or through
4	your attention to paragraph number 96.	4	any other means to determine whether the
5	(Witness complying.)	5	public health community reached a
6	Q. This document contains further rewriting	6	consensus prior to October -- prior to
7	and writing over of the draft that we	7	2001 that light cigarettes had the same
8	previously identified as exhibit 37 dated	8	health risk as regular cigarettes;
9	December 16, 2005; is that correct?	9	correct?
10	A. This document is the continuing to evolve	10	A. Because I was running out of time and
11	this document. It is one of three files	11	because I did not feel a need to at the
12	that you have been provided.	12	point, I did no further analysis at the
13	Q. One of three files? Excuse me? That?	13	time I wrote this paragraph.
14	A. That you have been provided.	14	Q. Okay. The next sentence: "If this is the
15	Q. Okay. I didn't hear it.	15	case and if respondents did not have a
16	Looking at paragraph 96, "I am	16	means to form these beliefs prior to 2001,
17	informed by that the public health	17	then it appears that respondents are
18	community did not reach a consensus that	18	either telescoping their responses to
19	'light' cigarettes had the same health	19	earlier dates, remembering other events,
20	risk as regular cigarettes until	20	or some other reporting error."
21	approximately 2001"?	21	If this is the case, you are
22	A. Yes. I see that sentence.	22	accepting that first sentence to be true
23	Q. "If this is the case and if respondents	23	conditionally; correct?
24	did not have a means to form these beliefs	24	A. That's what the words say. Yes.
25	prior to 2001, then it appears that	25	Q. Okay.
	Page 823		Page 825
1	respondents are either telescoping their	1	A. I am.
2	responses to earlier dates, remembering	2	Q. Next: "...if respondents did not have a
3	other events, or some other reporting	3	means to form these beliefs prior to
4	error. Furthermore, these effects appear	4	2001," who if anyone told you that
5	to be greater for less confident	5	respondents did not have a means to form
6	respondents"?	6	these beliefs prior to 2001?
7	A. Yes. I see those two sentences.	7	A. The second sentence refers to the first
8	Q. Okay. First of all, who informed you that	8	sentence. The second -- the first
9	the public health community did not reach	9	sentence, as I have testified, and I put
10	a consensus that light cigarettes have the	10	into words, "I am informed," I said that
11	same health risk as regular cigarettes	11	this is information that I don't have time
12	until approximately 2001?	12	to check out. This is going to be the
13	A. Okay. This was in response to some	13	responsibility of other experts. And,
14	questions I had asked. Mr. Gallagher told	14	therefore, I put the conditional in.
15	me that other experts would testify to	15	Q. Okay. Now I am referring to the phrase,
16	this information.	16	"if respondents did not have a means to
17	Q. So this information comes exclusively from	17	form these beliefs prior to 2001." Do you
18	Mr. Gallagher; is that correct? That is	18	see that phrase?
19	the only basis of information for that	19	A. Yes. I see that phrase.
20	first sentence, "I am informed that the	20	Q. Did anyone suggest or tell you -- to you
21	public health community..."?	21	or tell you that respondents did not have
22	A. Well, I am informed, yes. Mr. Gallagher	22	a means to form their beliefs that light
23	said there is information, and that is why	23	cigarettes had the same health risks as
24	I put this caveat in there.	24	regular cigarettes prior to 2001?
25	Q. And you made no independent research of	25	A. This sentence refers to the first

1 basis to challenge the results of that 2 survey -- 3 A. Is that what you asked? 4 Q. -- that is cited in Monograph 13. Yes. 5 A. Oh, as I said, I have not studied that 6 survey, so I cannot comment upon its 7 methodology. 8 Q. Okay. And you have no basis to challenge 9 the finding that 32.2 percent of light 10 smokers in 1987 -- let me go back. 11 You neither endorse nor 12 challenge the finding reported here that 13 32.2 percent of light smokers in a 1987 14 survey believe that light smokers reduced 15 the risk of cancer -- low-tar cigarettes 16 reduced the risk of cancer versus regular 17 cigarettes; correct? 18 A. Although the author of this report implies 19 that there is a different interpretation, 20 I personally have no basis to which to 21 evaluate whether or not this survey used 22 appropriate methodology. 23 Q. Now you are familiar with Mr. Gaskin's 24 testimony. Do you recall he testified 25 that on or about Friday, December 16,	Page 850 1 did come to -- actually he must have come 2 through Boston, but I met him in Waltham. 3 Q. In Waltham. Did you have any conversation 4 on the telephone with Mr. Gallagher about 5 the draft report prior to his arrival? 6 A. We have already -- we have gone over this. 7 You know, I have spoken to him. 8 Q. Let me refine the question. Did you 9 provide Mr. Gallagher with access to your 10 draft report prior to his arrival in 11 Waltham on December 16th? 12 A. I don't recall. If -- 13 Q. Did -- 14 A. If we provided it, we provided it to you. 15 Q. Did you personally speak with 16 Mr. Gallagher about the findings that you 17 had tentatively arrived at in your draft 18 report prior to his arrival on 19 December 16, 2005? 20 A. I don't recall when I spoke to 21 Mr. Gallagher about some of the 22 uncertainty that I was having with respect 23 to this report. The word "findings" at 24 this point in a developing -- well, I 25 don't think the word "findings" is
Page 851 1 2005, Mr. Gallagher came to Boston to 2 discuss the time survey? 3 MR. HAUSFELD: Wait. Page and 4 line, please? 5 MR. GROSSMAN: It goes from 6 page 218 to 265. It is throughout that. 7 MR. HAUSFELD: Page? 8 BY MR. GROSSMAN: 9 Q. But I would like -- are you generally 10 familiar with that testimony? You read 11 that testimony? 12 A. I am generally familiar with Mr. Gaskin's 13 testimony. I have certainly not memorized 14 each and every line, and if you are now 15 asking me to remember -- 16 Q. I am not asking you -- I am not asking you 17 to. 18 A. Okay. 19 Q. Do you recall Mr. Gallagher coming to 20 Boston on or about December 16, 2005? 21 A. Okay. December 16th is a Friday; right? 22 Q. Yes. That's right. 23 A. Okay. December -- Mr. Gallagher came to 24 Boston. I can't remember whether I asked 25 him to come or not. I might have. But he	Page 853 1 accurate. 2 MASTER KRANTZ: I think the 3 language was tentative findings. 4 THE WITNESS: Or tentative 5 findings. 6 I, you know -- even tentative. 7 I really was conflicted about this, and -- 8 MR. GROSSMAN: I will rephrase 9 the question. 10 MR. HAUSFELD: Objection. 11 Please let the witness finish. 12 MASTER KRANTZ: I think at this 13 point the witness is not being responsive, 14 so pose a new question. 15 BY MR. GROSSMAN: 16 Q. Did you personally communicate to 17 Mr. Gallagher any of the results of the 18 survey that you conducted in late November 19 and early December of 2005 prior to 20 Mr. Gallagher's arrival in Waltham on 21 December 16th? 22 A. I do not recall any -- the details of what 23 I communicated to Mr. Gallagher about 24 preliminary analyses, which would be 25 numeric, coming out of this, nor do I

1 details. So I guess I have to answer I 2 don't recall -- 3 BY MR. GROSSMAN: 4 Q. Okay. 5 A. -- but, you know, if I -- at some point, 6 you know, sometimes things come to you, 7 and you kind of remember them, in which 8 case I will be glad to tell you. I am 9 really trying hard here. 10 MASTER KRANTZ: You are being 11 asked for your recollection as you sit 12 here today. 13 THE WITNESS: Okay. 14 BY MR. GROSSMAN: 15 Q. Doctor, Dr. Hauser, we previously have 16 marked as -- 17 MR. GROSSMAN: What was the 18 submitted -- 35? 19 Q. Could you take out exhibit 35, please? 20 (Witness complying.) 21 MR. HAUSFELD: It's your report. 22 THE WITNESS: Can we move this? 23 MR. GROSSMAN: Sure. 24 (Handing the laptop computer 25 back to Mr. Koethe.)	Page 858 1 A. -- did I make any reference to the 2 findings? 3 Q. Any of the findings in the time survey or 4 any of the calculations -- any of the 5 numbers that came out of the time survey? 6 A. Well, I do conclude that I was basically 7 losing confidence in the -- have lost at 8 this point confidence that there is 9 sufficiently accurate to make a full 10 opinion, which also reflects the fact that 11 I basically had no time to complete any 12 analyses further than that. 13 MR. GROSSMAN: Move to strike. 14 A. So I did not make -- 15 MASTER KRANTZ: That is a 16 nonresponsive answer. 17 THE WITNESS: Okay. 18 MASTER KRANTZ: I think the 19 question was simply -- really implicit in 20 your prior answer, I think, is footnote 2 21 the reference to the time survey in this 22 report, if I understood your answer. 23 MR. HAUSFELD: Your Honor, 24 having little confidence is a finding. 25 MASTER KRANTZ: I am sorry?
1 A. 35. It is a different version. 2 Q. Dr. Hauser, you are looking at exhibit 3 number 35, which is the report that you 4 signed and was served upon defendants on 5 December 19, 2005? 6 A. Yes. 7 Q. The only reference in that report to the 8 time survey is at footnote 2; is that 9 correct? 10 (Pause.) 11 (The witness viewing exhibit 12 number 35.) 13 Q. I am sorry. Is at footnote -- footnote 2? 14 A. Footnote 2. 15 Q. Now, Dr. Hauser, -- 16 A. I am a little worried about some of the 17 wording there, but that's okay. 18 Q. In footnote 2, you made no reference to 19 any of the findings of the time survey; is 20 that correct? 21 A. Well, after -- 22 MR. HAUSFELD: He is just asking 23 you -- 24 A. Did I in the footnote 2, -- 25 Q. Yes.	Page 859 Page 861 1 MR. HAUSFELD: Having, as he 2 says, little confidence that the responses 3 would be sufficiently accurate is 4 essentially a finding. 5 MASTER KRANTZ: The footnote 6 says what it says. 7 MR. HAUSFELD: He asked for a 8 finding. 9 MASTER KRANTZ: I believe the 10 testimony was, if I heard you correctly, 11 that footnote 2 was the only reference to 12 the time survey in this report. 13 THE WITNESS: I think he asked a 14 different question. 15 MASTER KRANTZ: Is that correct, 16 that is the only reference in this report? 17 THE WITNESS: To the best of my 18 recollection, this is the only reference, 19 but he was asking a different question. 20 BY MR. GROSSMAN: 21 Q. In all prior drafts of this report, you 22 had a description of the survey, a 23 description of the methodology, a 24 description of the responses, and a 25 description of the confidence or lack of

Page 862	Page 864
<p>1 confidence that you had in the outcome of 2 the survey; correct?</p> <p>3 A. As I was developing my opinion, I had 4 phrases in there that were very complete. 5 As I lost confidence, I couldn't -- 6 neither -- none of these were complete, so 7 I really didn't feel I should submit them.</p> <p>8 Q. Did anyone other than yourself have any 9 input into the decision to put in 10 footnote 2 in the place of all of the 11 material that had previously been in every 12 draft of this report that has now been 13 submitted to us?</p> <p>14 A. Yes.</p> <p>15 Q. Who?</p> <p>16 A. Well, I can describe how, but that is not 17 your question.</p> <p>18 Q. First who. Yes.</p> <p>19 A. The attorneys had some suggestion on how I 20 might phrase it.</p> <p>21 Q. Which attorneys?</p> <p>22 A. I don't recall.</p> <p>23 Q. Was Mr. Gallagher one of them?</p> <p>24 A. I don't recall.</p> <p>25 Q. But they were plaintiffs' attorneys, those</p>	<p>1 And I said, "No." 2 MR. GROSSMAN: I move to strike 3 as nonresponsive. 4 BY MR. GROSSMAN: 5 Q. What was their suggestion as to drafting 6 this paragraph 2 to replace all of the 7 discussion of the time survey that was in 8 all previous drafts?</p> <p>9 A. Their suggestion is, if I did not have 10 confidence in the report, then I should so 11 state in this report and not worry about 12 all the other details of the report in 13 which I have lost confidence.</p> <p>14 Q. But for their suggestion, would you have 15 submitted a report such as the draft of 16 December 19th that was previously marked 17 that contained a full description of the 18 survey plus your opinion about lack of 19 confidence in certain of the results?</p> <p>20 MR. HAUSFELD: Objection. It is 21 a non sequitur.</p> <p>22 Q. Could you please answer the question?</p> <p>23 MASTER KRANTZ: Answer it if you 24 can.</p> <p>25 THE WITNESS: Okay.</p>

	Page 906	Page 908
1	you a different question.	1 A. So let me do my best.
2	BY MR. GARNICK:	2 Q. No. That was my question is whether you
3	Q. Do you have one number that you would	3 had a single number that reflected the
4	stand behind as the number -- as the	4 percentage of light smokers for whom
5	percentage of light smokers for which	5 health risks are a significant
6	health risks is a significant contributing	6 contributing factor in their decision to
7	factor in their decision to purchase	7 smoke light cigarettes. If there isn't a
8	lights?	8 single number, that answers my question.
9	A. I really --	9 A. Okay. It is a trick question. But go
10	Q. Do you have one number?	10 ahead. Yes.
11	A. You are boiling down a complicated	11 Q. So is there a single number?
12	situation to a single number which I	12 A. Well, you know, the -- given the trick
13	object to.	13 question, the answer is that there is no
14	Q. No?	14 single number.
15	A. I will do my best.	15 Q. Thank you. Let me ask you. Do you
16	Q. You can say no or you can say yes. And	16 utilize your conjoint analysis to
17	where is it in the report? Where is that	17 establish the percentage of class
18	number in the report?	18 members --
19	MR. HAUSFELD: Now that is	19 MR. GARNICK: No. Strike that.
20	compound. Do you want him to go through	20 Q. Do you utilize a conjoint analysis to
21	the numbers?	21 establish the percentage of light smokers
22	MR. GARNICK: No speaking	22 who relied on cigarette manufacturers'
23	objections, please.	23 allegedly false representations in
24	BY MR. GARNICK:	24 deciding to purchase light cigarettes?
25	Q. I don't want you to go through the	25 A. State that again?
	Page 907	Page 909
1	numbers. I want you to tell -- show me	1 Q. Yes. Do you utilize a conjoint analysis
2	where you have a number in this report.	2 to establish the percentage of light
3	A. Well, let me -- give me a chance to --	3 smokers who relied on cigarette companies'
4	Q. Go ahead.	4 allegedly false representations in
5	MASTER KRANTZ: Let's get some	5 deciding to purchase light cigarettes?
6	clarity, because the questions have	6 A. Coupled with other information, the
7	shifted a little bit. What is the precise	7 conjoint analyses can be used to answer
8	question you want answered?	8 that particular question, but I am relying
9	MR. GARNICK: Let me start	9 on other experts to establish the whether
10	again.	10 or not cigarette companies have in fact
11	BY MR. GARNICK:	11 misled consumers, although I understand
12	Q. Please show me, if you can, if it is in	12 that -- I have been told that that has
13	the report, the percentage of light	13 been established and, of course, all the
14	smokers for which health risks is a	14 other things that are part of that
15	significant contributing factor in their	15 question.
16	decision to purchase lights.	16 Q. So is the answer no?
17	(Pause.)	17 A. Answer the question -- ask the question
18	(The witness viewing exhibit	18 again, and I'll do my best.
19	number 35.)	19 Q. Do you utilize your conjoint analysis to
20	A. Okay. The best I can answer to you -- you	20 establish -- do you utilize your conjoint
21	keep asking -- you know, it is sort of	21 analysis to establish the percentage of
22	like asking, you know, can you show me a	22 light smokers who relied on cigarette
23	single number that -- the report cannot be	23 companies' allegedly false representations
24	boiled down to a single number.	24 in deciding to purchase light cigarettes?
25	Q. Okay.	25 A. I have not personally established all of

1 the items in the predicate to your 2 question. 3 Q. Thank you. Let me ask you to turn to 4 exhibit 37, which is your December draft 5 16th report. 6 (Handing exhibit number 37 to 7 the witness.) 8 A. Which one is this? It is one of the 9 December 16th ones. Is this the one we 10 are calling Long or calling Short? 11 Q. I thought we were calling this Big. 12 A. Or Big, or whatever. 13 Q. Let me ask you to turn to paragraph 93, 14 and then we can compare -- make sure it is 15 the right one. 16 A. Okay. 17 (Witness complying.) 18 A. No. I just want to make sure that I, 19 because there are three reports -- 20 Q. I think this is the earlier of the three. 21 A. This is one of the two that was developed 22 on December 16th. 23 Q. Right. 24 A. And I now recognize it. Thank you. 25 Q. Okay. Now the purpose of the time study	Page 910 1 I am getting a little tired here -- it 2 included statements about current beliefs 3 and whether or not they could recall 4 changing their beliefs -- 5 Q. Okay. 6 A. -- with respect to the aggregated scale. 7 Q. And in paragraph 93A, it states, "151" -- 8 and then in parentheses "15 percent" -- 9 "of the 1,026 respondents currently 10 believe that smoking 'light' cigarettes 11 has LESS health risks than smoking regular 12 cigarettes." 13 Did I read that correctly? 14 A. You read that correctly. 15 Q. Okay. Now at one point in writing this 16 report, did you believe that -- I am 17 trying to phrase this without running into 18 -- at any time -- 19 MR. GARNICK: Well, strike that. 20 MR. HAUSFELD: So I can withdraw 21 the objection? 22 MR. GARNICK: Yes. 23 MR. HAUSFELD: Okay. 24 BY MR. GARNICK: 25 Q. First of all, who wrote 93A? Did you
Page 911 1 was to attempt to determine essentially 2 when light smokers came to believe that 3 lights were not safer than regular 4 cigarettes? Is that fair? Is that one of 5 the purposes of the time study? 6 A. That is one of the purposes -- 7 Q. Okay. 8 A. -- subject to the actual phrasing in the 9 questionnaire. 10 Q. Okay. And as a predicate to that, one of 11 the questions you asked the people who 12 were participating in the study was about 13 their current beliefs about the risks of 14 lights compared to the risks of regular 15 cigarettes; is that correct? 16 A. Well, we're asking an aggregated scale, 17 which I have described in this report. 18 Q. Right. And that aggregated scale included 19 questions that talked about present 20 beliefs as opposed to past beliefs; 21 correct? 22 A. It is a complicated question -- well, it 23 is a questionnaire that is long, and it 24 included to the best of my recollection -- 25 and I would be happy to look through it --	Page 913 1 write 93A? 2 A. Well, I think at my direction, I described 3 this to Mr. Gaskin and said, "You know, 4 put all these numbers in here." 5 Q. Okay. 6 A. It is still -- as I have testified this 7 morning earlier, some of this is 8 boilerplate. Some of it is material I'm 9 still developing. 10 Q. And you also testified earlier today that 11 over time you came not to -- to start 12 losing confidence in some of the results 13 of the time survey; correct? 14 A. Yes. 15 Q. And did you lose confidence in the result 16 of the time survey reflected in 93A? 17 A. Well, if we -- yes. In fact, there is 18 another footnote in one of these that 19 describes in detail how to interpret that 20 particular number, and I thought that this 21 number is not reflective of the more 22 accurate conjoint analysis study and also 23 some projections that could be made from 24 that. 25 Q. Well, I thought that what you had done was